

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
DIVISION**

**UNITED STATES OF AMERICA**

**v.**

**CHAD DAVID DUNAWAY (1)**

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**CASE NUMBER 6:08-CR-74-RC**

**REPORT AND RECOMMENDATION ON PETITION FOR  
WARRANT FOR OFFENDER UNDER SUPERVISION**

Pending is a “Petition for Warrant or Summons for Offender under Supervision” filed May 6, 2016, alleging that the Defendant, Chad David Dunaway, violated his conditions of supervised release. This matter is referred to the undersigned United States Magistrate Judge for review, hearing, and submission of a report with recommended findings of fact and conclusions of law. *See United States v. Rodriguez*, 23 F.3d 919, 920 n. 1 (5<sup>th</sup> Cir. 1994); *see also* 18 U.S.C. § 3401(1) and Local Rules for the Assignment of Duties to United States Magistrate Judges.

**I. The Original Conviction and Sentence**

Chad David Dunaway was sentenced on March 31, 2009, by United States District Judge Leonard Davis, of the Eastern District of Texas, after pleading guilty to the offense of Possession with Intent to Distribute Methamphetamine, a Class B felony. This offense carried a statutory maximum imprisonment term of 5 years. The guideline imprisonment range, based on a total offense level of 23 and a criminal history category of V, was 84 to 105 months. Judge Davis sentenced Defendant to 100 months of imprisonment followed by a 5-year term of supervised

release subject to the standard conditions of release, plus special conditions to include financial disclosure, drug testing and treatment and a \$100 special assessment.

## **II. The Period of Supervision**

On December 11, 2014, Defendant completed his period of imprisonment and began service of the term of supervised release.

## **III. The Petition**

United States Probation Officer Andrea Smith filed the Petition for Warrant for Offender Under Supervision raising one allegation. The petition alleges that Chad David Dunaway violated the following condition of release:

Allegation 1. The defendant shall not commit another federal, state, or local crime. Here, it is alleged that Defendant was arrested on November 14, 2015 and charged with Possession of Controlled Substance PG1 4G<200G, Prohibited Weapon, and Possession of Drug Paraphernalia while in Gregg County, Texas. It is also alleged that Defendant appeared before U.S. Magistrate Judge Mitchell on March 29, 2016 for an initial appearance on an Indictment charging a violation of 21 U.S.C. § 846 (Conspiracy to Possess with Intent to Distribute and Distribution of 500 Grams or More of a Mixture or Substance Containing a Detectable Amount of Methamphetamine, a Schedule II Controlled Substance).

## **IV. Proceedings**

On April 20, 2017, the undersigned convened a hearing pursuant to FED. R. CRIM. P. 32.1 to hear evidence and arguments on whether the Defendant violated his conditions of supervised release, and the appropriate course of action for any such violations.

At the revocation hearing, counsel for the Government and the Defendant announced an agreement had been reached as to a recommended disposition regarding the petition. The Defendant agreed to plead “true” to the allegation in the petition. In addition, the parties agreed that the Defendant should be sentenced to a term of imprisonment of 30 months, to run consecutive to the sentence imposed in Case No. 6:16cr17, with no supervised release to follow.

## **V. Applicable Law**

According to 18 U.S.C. § 3583(e)(3), a court may revoke a term of supervised release and require a defendant to serve in prison all or part of the term of supervised release authorized by statute for the offense that resulted in such term of supervised release without credit for time previously served on post-release supervision, if the court, pursuant to the Federal Rules of Criminal Procedure applicable to revocation of probation or supervised release, finds by a preponderance of the evidence that the defendant violated a condition of supervised release, except that a defendant whose term is revoked under this paragraph may not be required to serve on any such revocation more than 5 years in prison if the offense that resulted in the term of supervised release is a Class A felony, more than 3 years if such offense is a Class B felony, more than 2 years if such offense is a Class C or D felony, or more than 1 year in any other case. The original offense of conviction here was a Class B felony; therefore, the maximum sentence is 3 years of imprisonment.

Supervised release shall be revoked upon a finding of a Grade A or B supervised release violation. U.S.S.G. § 7B1.3(a)(1). Pursuant to 18 U.S.C. § 3583(g), the Court also shall revoke the term of supervised release if Defendant possessed a controlled substance in violation of his conditions. Evidence of drug use is sufficient to support a finding of possession of a controlled substance within the meaning of 18 U.S.C. § 3583(g). *See U.S. v. Smith*, 978 F.2d 181 (5<sup>th</sup> Cir. 1992).

According to U.S.S.G. § 7B1.1(a),<sup>1</sup> if the Court finds by a preponderance of the evidence that Defendant violated his conditions of supervision by committing the offense of Conspiracy to Possess with Intent to Distribute and Distribution of 500 Grams or More of a Mixture or Substance

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<sup>1</sup> All of the policy statements in Chapter 7 that govern sentences imposed upon revocation of supervised release are non-binding. *See U.S.S.G. Ch. 7 Pt. A; see also United States v. Price*, 519 Fed.Appx. 560, 562 (11<sup>th</sup> Cir. 2013).

Containing a Detectable Amount of Methamphetamine in violation of 21 U.S.C. § 846, he will be guilty of committing a Grade A violation. Under the Sentencing Guidelines, which are non-binding, if the Court finds Defendant guilty of a Grade A violation with his original criminal history category of V, the applicable guideline range is 30 to 37 months of imprisonment. If the Court finds by a preponderance of the evidence that Defendant by being arrested and charged with Possession of a Controlled Substance PG  $> 4\text{g} < 200\text{ g}$ , a 2<sup>nd</sup> Degree Felony, he will be guilty of committing a Grade B violation. Under the Sentencing Guidelines, if the Court finds Defendant guilty of a Grade B violation with his original criminal history category of V, the applicable guideline range is 18 to 24 months of imprisonment. If the Court finds by a preponderance of the evidence that Defendant violated his conditions of supervision by being arrested and charged with Possession of Drug Paraphernalia and Prohibited Weapon, the Defendant will be guilty of committing a Grade C violation. With Defendant's original criminal history category of V, the applicable guideline range for a Grade C violation is 7 to 13 months of imprisonment.

According to U.S.S.G. § 7B1.3(c)(1), where the minimum term of imprisonment determined under U.S.S.G. § 7B1.4 is at least 1 month but not more than 6 months, the minimum term may be satisfied by (A) a sentence of imprisonment; or (B) a sentence of imprisonment that includes a term of supervised release with a condition that substitutes community confinement or home detention according to the schedule in U.S.S.G. § 5C1.1(e), for any portion of the minimum term. According to U.S.S.G. § 7B1.3(c)(2), where the minimum term of imprisonment determined under U.S.S.G. § 7B1.4 is more than 6 months but not more than 10 months, the minimum term may be satisfied by (A) a sentence of imprisonment; or (B) a sentence of imprisonment that includes a term of supervised release with a condition that substitutes community confinement or

home detention according to the schedule in U.S.S.G. § 5C1.1(e), provided that at least one-half of the minimum term is satisfied by imprisonment.

U.S.S.G. § 7B1.3(c)(3) indicates in the case of a revocation based, at least in part, on a violation of a condition specifically pertaining to community confinement, intermittent confinement, or home detention, use of the same or a less restrictive sanction is not recommended. According to U.S.S.G. § 7B1.3(d), any restitution, fine, community confinement, home detention or intermittent confinement previously imposed in connection with a sentence for which revocation is ordered that remains unpaid or unserved at the time of revocation shall be ordered to be paid or served in addition to the sanction determined under U.S.S.G. § 7B1.4 and any such unserved period of community confinement, home detention, or intermittent confinement may be converted to an equivalent period of imprisonment.

The grade of the violation having the most serious grade is used to determine the guideline range when there is more than one violation of the conditions of supervision, or the violation includes conduct that constitutes more than one offense. U.S.S.G. § 7B1.1(b). Any term of imprisonment imposed upon revocation of probation or supervised release shall be ordered to be served consecutively to any sentence of imprisonment that the defendant is serving, whether or not the sentence of imprisonment being served resulted from the conduct that is the basis of the revocation of probation or supervised release.

When a term of supervised release is revoked and the defendant is required to serve a term of imprisonment, the court may include a requirement that the defendant be placed on a term of supervised release after imprisonment. The length of such a term of supervised release shall not exceed the term of supervised release authorized by statute for the offense that resulted in the original term of supervised release, less any term of imprisonment that was imposed upon

revocation of supervised release. 18 U.S.C. § 3583(h); U.S.S.G. § 7B1.3(g)(2). The authorized term of supervised release for the present offense is life.

In determining the Defendant's sentence, the court shall consider:

1. The nature and circumstances of the offense and the history and characteristics of the defendant. (18 U.S.C. § 3553(a)(1))
2. The need for the sentence imposed: to afford adequate deterrence to criminal conduct; to protect the public from further crimes of the defendant; and to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner. (18 U.S.C. § 3553(a)(2)(B)–(D))
3. Applicable guidelines and policy statements issued by the Sentencing Commission, for the appropriate application of the provisions when modifying or revoking supervised release pursuant to 28 U.S.C. § 994(a)(3), that are in effect on the date the defendant is sentenced. (18 U.S.C. § 3553(a)(4) and 28 U.S.C. § 994(a)(3))
4. Any pertinent policy statement issued by the Sentencing Commission, pursuant to 28 U.S.C. § 994(a)(2), that is in effect on the date the defendant is sentenced. (18 U.S.C. § 3553(a)(5))
5. The need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct. (18 U.S.C. § 3553(a)(6))
6. The need to provide restitution to any victims of the offense.

18 U.S.C. §§ 3583(e) and 3553(a).

## **VI. Analysis**

The Defendant pled "true" to the allegation in the petition that he violated a mandatory condition of release by committing another federal, state, or local crime. Based upon the Defendant's plea of "true" to this allegation in the Petition for Warrant or Summons for Offender under Supervision and U.S.S.G. § 7B1.1(a), the undersigned finds that the Defendant violated a condition of his supervised release.

The undersigned has carefully considered each of the factors listed in 18 U.S.C. § 3583(e). The Defendant's violation is a Grade A violation, and his criminal history category is V. The policy statement range in the Guidelines Manual is 30 to 37 months of imprisonment. The Defendant did not comply with the conditions of supervision and has demonstrated an unwillingness to adhere to conditions of supervision. Consequently, incarceration appropriately addresses the Defendant's violations. The sentencing objectives of punishment, deterrence and rehabilitation, together with the aforementioned statutory sentencing factors, will best be served by a prison sentence of 30 months, with no term of supervised release to follow.

## **VII. Recommendation**

It is recommended that the Court find that the Defendant violated a mandatory condition of release by committing another federal, state, or local crime. The petition should be granted and the Defendant's supervised release should be revoked pursuant to 18 U.S.C. § 3583.

The Defendant should be sentenced to a term of 30 months of imprisonment to run consecutive to the sentence imposed in Case No. 6:16cr17, with no term of supervised release to follow. Any criminal monetary penalties previously ordered in the final judgment should be imposed in this revocation, with all payments collected credited towards outstanding balances. The Defendant requested to serve his prison term at the Federal Correctional Institution in Otisville, New York to facilitate Defendant's safety considerations. The Defendant's request should be accommodated, if possible.

Before the conclusion of the hearing, the undersigned announced the foregoing recommendation and notified Defendant of his right to object to this Report and Recommendation and to be present and allocute before being sentenced by the Court. Defendant waived those rights on the record and executed a written waiver in open court. The Government also waived its right

to object to the Report and Recommendation. It is, therefore, recommended that the Court revoke Defendant's supervised release and enter a Judgment and Commitment for him to be imprisoned for a period of 30 months to run consecutive to the sentence imposed in Case No. 6:16cr17 with no further supervised release.

So ORDERED and SIGNED this 20th day of April, 2017.

  
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K. NICOLE MITCHELL  
UNITED STATES MAGISTRATE JUDGE